

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of  
MGA Entertainment, Inc.

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File No. EB-09-SE-172  
NAL/Acct. No. 201132100006  
FRN 0020283297

**ORDER AND NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: October 25, 2010**

**Released: October 26, 2010**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that MGA Entertainment, Inc. (“MGA”), a reseller of wireless services through its Bratz Mobile phone offering,<sup>1</sup> apparently willfully violated the wireless handset hearing aid compatibility status report filing requirements set forth in Section 20.19(i)(1) of the Commission’s Rules (“Rules”).<sup>2</sup> For this apparent violation, we propose a forfeiture in the amount of six thousand dollars (\$6,000). We also direct MGA to file the required wireless handset hearing aid compatibility status report within thirty (30) days of the release of this NAL.

**II. BACKGROUND**

2. In the 2003 *Hearing Aid Compatibility Order*, the Commission adopted several measures to enhance the ability of individuals with hearing disabilities to access digital wireless telecommunications.<sup>3</sup> The Commission established technical standards that digital wireless handsets must meet to be considered compatible with hearing aids operating in acoustic coupling and inductive coupling (telecoil) modes.<sup>4</sup> The Commission further established, for each standard, deadlines by which manufacturers and service providers were required to offer specified numbers or percentages of digital wireless handsets per air interface<sup>5</sup> that are compliant with the relevant standard if they did not come

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<sup>1</sup> MGA Entertainment’s wholly owned subsidiary, MGA Entertainment HK Ltd., holds equipment certifications granted by the Commission.

<sup>2</sup> 47 C.F.R. § 20.19(i)(1).

<sup>3</sup> The Commission adopted these requirements for digital wireless telephones under the authority of the Hearing Aid Compatibility Act of 1988, codified at Section 710(b)(2)(C) of the Communications Act of 1934, as amended, 47 U.S.C. § 610(b)(2)(C). See *Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones*, Report and Order, 18 FCC Rcd 16753, 16787 ¶ 89 (2003); Erratum, 18 FCC Rcd 18047 (2003) (“*Hearing Aid Compatibility Order*”); Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11221 (2005).

<sup>4</sup> See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16777 ¶ 56; 47 C.F.R. § 20.19(b)(1), (2).

<sup>5</sup> The term “air interface” refers to the technical protocol that ensures compatibility between mobile radio service equipment, such as handsets, and the service provider’s base stations. Currently, the leading air interfaces include Code Division Multiple Access (CDMA), Global System for Mobile Communications (GSM), Integrated Digital Enhanced Network (iDEN) and Wideband Code Division Multiple Access (WCDMA) a/k/a Universal Mobile Telecommunications System (UMTS).

under the *de minimis* exception.<sup>6</sup> In February 2008, as part of a comprehensive reconsideration of the effectiveness of the hearing aid compatibility rules, the Commission released an order that, among other things, adopted new compatible handset deployment benchmarks beginning in 2008.<sup>7</sup>

3. Of primary relevance, the Commission also adopted reporting requirements to ensure that it could monitor the availability of these handsets and to provide valuable information to the public concerning the technical testing and commercial availability of hearing aid-compatible handsets.<sup>8</sup> The Commission initially required manufacturers and digital wireless service providers to report every six months on efforts toward compliance with the hearing aid compatibility requirements for the first three years of implementation (May 17, 2004, November 17, 2004, May 17, 2005, November 17, 2005, May 17, 2006 and November 17, 2006), and then annually thereafter through the fifth year of implementation (November 19, 2007 and November 17, 2008).<sup>9</sup> In its 2008 *Hearing Aid Compatibility First Report and Order*, the Commission extended these reporting requirements with certain modifications on an open ended basis, beginning January 15, 2009.<sup>10</sup> The Commission also made clear that these reporting requirements apply to service providers that fit within the *de minimis* exception.<sup>11</sup>

4. MGA failed to file a hearing aid compatibility status report for the period from July 1, 2008 through December 31, 2008 (due January 15, 2009). The Wireless Telecommunications Bureau referred MGA's apparent violation of the hearing aid compatibility reporting requirements to the Enforcement Bureau for possible enforcement action. On November 3, 2009, the Enforcement Bureau's Spectrum Enforcement Division issued MGA a Letter of Inquiry ("LOI").<sup>12</sup> In response to the LOI, MGA provided the Division a copy of a letter it sent to Ztar Mobile, Inc. ("Ztar"), in which MGA asserted that it is not responsible for any violations of Section 20.19(i)(1) of the Rules pursuant to its license agreement with Ztar and requested that Ztar provide it with written confirmation that Ztar either timely filed or failed to file the required report by the filing date.<sup>13</sup> This letter also asks Ztar to confirm to MGA that it had notified the Commission that it is responsible for filing the required form on behalf of MGA and that it will indemnify MGA with regard to "potential or actual violation of" the Rules.<sup>14</sup>

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<sup>6</sup> See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780 ¶ 65; 47 C.F.R. §§ 20.19(c) and (d). The *de minimis* exception provides that manufacturers or mobile service providers that offer two or fewer digital wireless handset models per air interface are exempt from the hearing aid compatibility deployment requirements, and manufacturers or mobile service providers that offer three digital wireless handset models per air interface must offer at least one compliant model. 47 C.F.R. § 20.19(e).

<sup>7</sup> See *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406 (2008) ("*Hearing Aid Compatibility First Report and Order*"), Order on Reconsideration and Erratum, 23 FCC Rcd 7249 (2008).

<sup>8</sup> See *Hearing Compatibility First Report and Order*, 23 FCC Rcd at 3443 ¶ 91.

<sup>9</sup> *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787 ¶ 89; see also *Wireless Telecommunications Bureau Announces Hearing Aid Compatibility Reporting Dates for Wireless Carriers and Handset Manufacturers*, Public Notice, 19 FCC Rcd 4097 (Wireless Tel. Bur. 2004).

<sup>10</sup> See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3445-46 ¶¶ 97-99.

<sup>11</sup> *Id.* at 3446 ¶ 99.

<sup>12</sup> See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Isaac Larian, President and CEO, MGA Entertainment (November 3, 2009) ("LOI").

<sup>13</sup> See Letter from Ellie Tope, Counsel, MGA Entertainment, to Kevin Haddad, Ztar Mobile, Inc. (November 11, 2009) ("MGA Letter"), at 1-2.

<sup>14</sup> *Id.* at 2.

### III. DISCUSSION

#### A. Failure to File Hearing Aid Compatibility Status Report

5. Section 20.19(i)(1) of the Rules requires all service providers to file hearing aid compatibility status reports on January 15, 2009 (covering the six month period ending December 31, 2008) and then annually thereafter.<sup>15</sup> These reports are necessary to enable the Commission to perform its enforcement function and evaluate whether MGA is in compliance with Commission mandates that were adopted to facilitate the accessibility of hearing aid-compatible wireless handsets. These reports also provide valuable information to the public concerning the technical testing and commercial availability of hearing aid-compatible handsets.

6. MGA questions the applicability of Section 20.19(i)(1) of the Rules. In this regard, we note that MGA purchases wireless service from Ztar and then resells this service to customers through marketing of its prepaid Bratz Mobile phone. The Commission has made clear that the hearing aid compatibility handset requirements apply to service providers such as resellers.<sup>16</sup> We also find unpersuasive MGA's assertion that it was not responsible for compliance with Section 20.19(i)(1) of the Rules because, pursuant to its license agreement with Ztar, Ztar was responsible for filing the required reports. As a provider of digital wireless service, MGA is responsible for complying with applicable Commission's rules, including the hearing aid compatibility reporting requirements. Moreover, consistent with Commission precedent, MGA is responsible for the acts and omission of its employees and third party contractors, such as Ztar.<sup>17</sup> To date, Commission records show no January 15, 2009 hearing aid compatibility status report on file for MGA. Accordingly, we find MGA in apparent willful<sup>18</sup> violation of the requirements set forth in Section 20.19(i)(1) of the Rules.<sup>19</sup>

#### B. Proposed Forfeiture

7. Under Section 503(b)(1)(B) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>20</sup> To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against

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<sup>15</sup> 47 C.F.R. § 20.19(i)(1).

<sup>16</sup> See e.g., *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3424 ¶ 46 (concluding that a three-month extension of deadlines for meeting the handset deployment benchmarks is appropriate with regard to "service providers that are not Tier I nationwide providers, including regional and smaller providers, such as Tier II and Tier III carriers, and other service providers such as resellers and MVNOs."). Accordingly, as a reseller of wireless services, MGA is a service provider subject to the wireless hearing aid compatibility handset requirements.

<sup>17</sup> See, e.g., *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64 (2002) ("*Eure*"); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34, 35 (1991); *Wagenvoort Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972).

<sup>18</sup> Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 ¶ 5 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*"); see also *Telrite Corporation*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7231, 7237 ¶ 12 (2008) ("*Telrite*"); *Regent USA*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 10520, 10523 ¶ 9 (2007); *San Jose Navigation, Inc.*, Forfeiture Order 22 FCC Rcd 1040, 1042 ¶ 9 (2007).

<sup>19</sup> 47 C.F.R. § 20.19(i)(1).

<sup>20</sup> 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

whom such notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.<sup>21</sup> The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.<sup>22</sup> Under this standard, we conclude that MGA is apparently liable for forfeiture for its failure to timely file the required hearing aid compatibility status report in apparent willful violation of Section 20.19(i)(1) of the Rules.

8. The Commission's *Forfeiture Policy Statement* and Section 1.80(b) of the Rules set a base forfeiture amount of \$3,000 for the failure to file required forms or information.<sup>23</sup> While the base forfeiture guidelines lend some predictability to the forfeiture process, the Commission retains the discretion to depart from these guidelines and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in Section 503 of the Act.<sup>24</sup> In exercising such discretion, we are required to take into account "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."<sup>25</sup>

9. We have exercised our discretion to set a higher base forfeiture amount for violations of the wireless hearing aid compatibility reporting requirements. In the *American Samoa Telecommunications Authority NAL*, we found that status reports are essential to the implementation and enforcement of the hearing aid compatibility rules.<sup>26</sup> The Commission relies on these reports to provide consumers with information regarding the technical specifications and commercial availability of hearing aid-compatible digital wireless handsets and to hold the digital wireless industry accountable to the increasing number of hearing-impaired individuals.<sup>27</sup> We noted that when setting an \$8,000 base forfeiture for violations of the hearing aid-compatible handset labeling requirements, the Commission emphasized that individuals with hearing impairments could only take advantage of critically important public safety benefits of digital wireless services if they had access to accurate information regarding hearing aid compatibility features of handsets.<sup>28</sup> We also noted that the Commission has adjusted the base forfeiture upward when noncompliance with filing requirements interferes with the accurate administration and enforcement of Commission rules.<sup>29</sup> Because the failure to file hearing aid compatibility status reports implicates similar public safety and enforcement concerns, we exercised our discretionary authority and established a base forfeiture amount of \$6,000 for failure to file hearing aid compatibility reports.<sup>30</sup> Consistent with *ASTCA*, we believe the established \$6,000 base forfeiture for each hearing aid compatibility reporting violation should apply here.

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<sup>21</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>22</sup> See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 ¶ 4 (2002).

<sup>23</sup> 47 C.F.R. § 1.80(b).

<sup>24</sup> See *Forfeiture Policy Statement*, 12 FCC Rcd at 17099 ¶ 22, 17101 ¶ 29. See also 47 C.F.R. § 1.80(b)(4) ("The Commission and its staff may use these guidelines in particular cases [, and] retain the discretion to issue a higher or lower forfeiture than provided in the guidelines, to issue no forfeiture at all, or to apply alternative or additional sanctions as permitted by the statute.") (*emphasis added*).

<sup>25</sup> 47 U.S.C. § 503(b)(2)(E). See also 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

<sup>26</sup> See *American Samoa Telecommunications Authority*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 16432 (Enf. Bur., Spectrum Enf. Div. 2008), *response pending* ("*ASTCA NAL*").

<sup>27</sup> See *ASTCA NAL*, 23 FCC Rcd at 16436-47 ¶ 10.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

10. Failure to file these reports, as is the case here, can have an adverse impact on the Commission's ability to ensure the commercial availability of hearing aid-compatible digital wireless handsets, to the detriment of consumers. Furthermore, in *ASTCA*, we made clear that failure to file a hearing aid compatibility status report constitutes a continuing violation that continues until the violation is cured.<sup>31</sup> MGA's failure to file the 2009 report on time had an adverse impact on the Commission's ability to monitor and ensure the commercial availability of hearing aid-compatible digital wireless handsets. Accordingly, we propose a forfeiture of \$6,000 against MGA for apparently willfully failing to file its hearing aid compatibility status report by the January 15, 2009 deadline in violation of Section 20.19(i)(1) of the Rules.<sup>32</sup>

11. Finally, as noted above, it appears that MGA still has not filed its hearing aid compatibility status report for the six-month period ending December 31, 2008, which was due on January 15, 2009. This report is necessary to enable the Commission to monitor the commercial availability of hearing aid-compatible handsets and to assess MGA's compliance with the hearing aid compatibility handset requirements during that period. We accordingly direct MGA to submit the report within thirty (30) days of the release of this *NAL*.

#### IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, MGA Entertainment, Inc. **IS NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of six thousand dollars (\$6,000) for failing to timely file its hearing aid compatibility status report in apparent willful violation of Section 20.19(i)(1) of the Rules.

13. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, MGA **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the *NAL*/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures. MGA also shall send electronic notification to JoAnn Lucanik at [JoAnn.Lucanik@fcc.gov](mailto:JoAnn.Lucanik@fcc.gov) and Karen Mercer at [Karen.Mercer@fcc.gov](mailto:Karen.Mercer@fcc.gov) on the date said payment is made.

<sup>31</sup> *Id.* at 16437 ¶ 11. See also *Telrite*, 23 FCC Rcd at 7244-45 ¶ 30 (determining that the failure to file Telecommunications Reporting Worksheets was a continuing violation); *Compass Global, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6125, 6138 ¶ 29 (2008) (same); *VCI Company*, Notice of Apparent Liability for Forfeiture and Order, 22 FCC Rcd 15933, 15940 ¶ 20 (2007) (determining that the failure to file Lifeline and Linkup Worksheets was a continuing violation).

<sup>32</sup> 47 C.F.R. § 20.19(i)(1).



15. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80(f)(3) and 1.16 of the Rules. The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption. The statement should also be emailed to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov and Karen Mercer at Karen.Mercer@fcc.gov.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. **IT IS FURTHER ORDERED** that, pursuant to Sections 4(i) and 4(j) of the Act, MGA **SHALL SUBMIT** the report described in paragraph 11 within thirty (30) days of the release of this *NAL*. The report must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption. A copy of the report must also be emailed to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov, Karen Mercer at Karen.Mercer@fcc.gov and Weiren Wang at Weiren.Wang@fcc.gov.

18. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail return receipt requested to Ellie Trope, Counsel, MGA Entertainment, Inc., 16300 Roscoe Boulevard, Suite 150, Van Nuys, California 91406.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot  
Chief, Spectrum Enforcement Division  
Enforcement Bureau